

EXHIBIT 14

Transcript of the Testimony of **Kenneth Andrew Gabrielson**

Date: April 27, 2010

Case: David Lee Womack v. Joseph V. Smith, et al.,

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Phone: 202-347-3700
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1 would come back. The inmates that we were taking
2 back to Lewisburg would be transferred back to
3 Lewisburg from the airlift.

4 On Tuesday --

5 Q. If I may interrupt you.

6 A. Sure.

7 Q. I think that level of detail is more
8 than sufficient. I appreciate it.

9 A. Sure.

10 Q. For that answer.

11 You also mentioned that you were a SHU
12 lieutenant?

13 A. Yes, sir.

14 Q. What was involved with that?

15 A. Special Housing Unit lieutenant is
16 responsible for the Special Housing Unit, for the
17 staff that work in there, to ensure that they're
18 performing their job as assigned and their post
19 order, which is a guideline of what they're doing
20 on a daily basis, and to ensure that the inmates
21 are following the rules and regulations set forth
22 in bureau policy.

1 The -- you have to make sure that --
2 for example, part of my responsibilities were cell
3 rotation, to make sure that inmate gets rotated
4 from the cell that they're in to another cell every
5 21 days, to make sure that inmates are getting fed
6 three times a day, to make sure that inmates are
7 allowed ordinarily recreation five hours per week
8 outside, to make sure that inmates are getting to
9 the law library. Like I said, recreation, that law
10 library, that they're getting their property
11 issued.

12 Basically, that Special Housing Unit, I
13 have to have a rapport with the staff in there and
14 I have to have a good rapport with the inmates that
15 are housed in there. When an inmate cannot behave
16 on the compound, they place them in the Special
17 Housing Unit.

18 My job as the Special Housing Unit
19 lieutenant was to ensure that things in those post
20 orders, both my post orders and the officers' post
21 orders were being followed to a T. When an inmate
22 comes off of the compound, out of the general

1 population into the Special Housing Unit, that
2 there's a visual search conducted. That that
3 inmate is searched, metal detected to ensure that
4 no contraband is coming into the Special Housing
5 Unit.

6 That was a big problem back when I was
7 a Special Housing Unit lieutenant. Because we were
8 going tobacco free, a lot of inmates were trying to
9 move tobacco from the compound in the Special
10 Housing Unit lieutenant -- into the Special Housing
11 Unit, rather. It was a hustle. It was how they
12 made money. So that was one example right there.

13 When an inmate came in, a good visual
14 search was done on that inmate to ensure that they
15 weren't moving any contraband, any weapons. That
16 was a big thing, too, to ensure that no weapons
17 came into the Special Housing Unit. That we ran
18 that unit as safely and securely as we possibly
19 could.

20 Q. And then you also mentioned you were
21 operations lieutenant?

22 A. Yes, sir.

1 rise to him being placed in restraints in December
2 2004?

3 A. Yes, sir.

4 Q. What do you recall?

5 A. I remember Officer Klosner, who was
6 working the basement, called me to come down to the
7 basement on the radio. Reported down to the
8 basement, asked what the problem was. I went down
9 to -- I believe it was near the end, left-hand side
10 of the basement range. It was near cell 008, 009,
11 right in that area. Asked him what the problem
12 was.

13 He was escorting Inmate David Womack
14 back from medical, which was in the same building
15 that our segregation unit was in at the time. When
16 he's bringing him back -- he went over for a
17 medical exam. His vision was blurred. He was
18 bringing him back. He was refusing to remove the
19 restraints he was placed in, a modified ambulatory
20 restraint to go over to the hospital. He had a
21 Martin chain and hand restraints on his hands and
22 his waist.

1 And Officer Klosner, who was working
2 for me as part of the segregation crew at the time,
3 said he's refusing to come out of the restraints.
4 He said he's not going to give the cuff back to me
5 if I put him back in the cell. What he meant
6 was he -- we put him in the cell and open the slot
7 that I talked of in the door and remove the
8 restraints right there. Inmate Womack stated, I'm
9 not giving you the restraints back.

10 At that point I started talking to him.
11 I had a very good rapport with Inmate Womack, as
12 good as anybody else, I believe, that worked there.
13 I dealt with him a lot. He was an orderly for me
14 when I was out in the compound as an operations and
15 activities lieutenant. He was an orderly for the
16 SIS office at the time. I had a good rapport with
17 him. He was definitely an inmate you needed a
18 rapport with if you were going to deal with him.
19 Because he was -- he was high maintenance. Very --
20 zero to a hundred in a hurry. So I had a very good
21 rapport with him.

22 I started to talk to him and told

1 him -- I said, I don't know what your issue is.
2 When I come in this morning -- the first thing I
3 would do in the mornings was make my rounds through
4 the unit. He said about his vision was blurred, so
5 I made sure that he got an appointment and got over
6 to health services that day when they had time to
7 see him.

8 Tried to convince him that he needed to
9 give the restraints back, put him in the cell. Got
10 to the point where he was going to do it. He was
11 going to give me the restraints back. So I went
12 ahead and put him in the cell, started to remove
13 the restraints.

14 At that point he changed his mind.
15 Backed away from me. I tried to hold onto his
16 restraints with my left hand and in my right hand I
17 had the restraint key that would open the hand
18 restraints. At that time he took his shoes off and
19 put both feet up against the door, started, like,
20 climbing the inside of the door with me supporting
21 his weight holding onto his hand restraints, and
22 was pushing back to pull away.

1 So at that point he had my left hand
2 pulled all the way through the food slot, probably
3 almost up to my shoulder, at which point I told him
4 to take his feet down off -- I didn't want him to
5 fall and hurt himself any more. Take your feet
6 down, I'll bring you out of the cell.

7 When he saw that I was going to remove
8 him from the cell, he took his feet off the door
9 and opened the cell door, had the cell door open,
10 took control of his restraints, took him out to
11 cell 024, which was an empty cell. We didn't house
12 people in that cell.

13 Took him down to that end cell and --
14 more like a holding cell than a cell that you would
15 house inmates in. Put him in there a while and
16 then I had staff that were working in the basement
17 maintain control of him while I went to make
18 notifications on his disruptive behavior. I mean,
19 to report the -- you know, that he had assaulted me
20 by pulling me through the food slot into the cell
21 that he was assigned. I believe it was 008, 009,
22 somewhere in that area.

1 From there I got authorization from
2 Warden Smith, I believe it was at the time. I
3 notified Captain Oliver and then he called me back
4 and told me I had authorization to go ahead and
5 assemble a use-of-force team to apply ambulatory
6 restraints on Inmate Womack.

7 Q. You had mentioned that the type of
8 restraints that were initially on Mr. Womack were
9 modified?

10 A. I don't believe he was wearing leg
11 irons for the escort over to the -- full ambulatory
12 restraints included leg irons, is how I see it,
13 when I use ambulatory restraints. In this case he
14 was just ambulatory restraints up front so that
15 they could do the medical exam. You can't put a
16 blood pressure cuff on if you're cuffed behind your
17 back.

18 So the precautionary measures that were
19 taken for this escort, ordinarily from the Special
20 Housing Unit when somebody's going to get a medical
21 exam, would be to put them in a Martin chain and
22 hand restraints applied -- the hand restraints are

1 Q. So you mentioned it was both calculated
2 and immediate. Started immediate --

3 A. Started immediate.

4 Q. -- and then became calculated?

5 A. Once I had authorization to continue
6 the restraints, then it became calculated. To the
7 point where the video camera was in operation,
8 staff donned protective gear and medical staff came
9 down and we went right down the letter of the law
10 as far as what you do in a calculated use of force.

11 The medical staff, I'm sure, removed
12 his clothing, took his -- you know, checked his
13 vitals to make sure that everything was all right
14 medically. And then new clothing was applied and a
15 full set of ambulatory restraints, to include
16 probably a black box was placed on that inmate
17 to -- with leg irons, Martin chain, hand
18 restraints, padlock, and the black box.

19 Q. Now, when the use of force became
20 calculated -- let me back up. Is it normal to use
21 confrontation avoidance when the use of force is
22 calculated?

1 leverage that it would take to pop that pin, and it
2 seemed to work successfully to keep him from
3 destroying the restraints.

4 Q. And what about placing him in
5 four-point restraints, was that an option?

6 MR. BUTLER: Objection to form.

7 THE WITNESS: Four points are an option
8 and they -- it's a -- I want to say a final
9 option, but it's near the end. It's one of the
10 last things we choose to do. He's usually
11 hurting himself or attempting -- continually
12 attempting to hurt others before we'd place him
13 in a four-point restraint.

14 BY MR. HEWITT:

15 Q. If he had a history of defeating
16 ambulatory restraints and you wanted to make sure
17 that he was secured in restraints, why wouldn't you
18 put him in four-point restraints?

19 A. Because at the time he's not hurting
20 himself, he is complete -- at the time in question,
21 is that what you're asking me?

22 Q. Yes.

1 A. He was assaultive towards me by pulling
2 me through the cell door for one. He didn't want
3 to give the restraints back. When left in the
4 ambulatory restraints, at that point he wasn't
5 trying to assault anybody else. He was making his
6 point that he wanted to keep the ambulatory
7 restraints on and at no point would he let anybody
8 take those ambulatory restraints off without
9 attempting to resist.

10 When placed into a cell in ambulatory
11 restraints, wasn't being resistant towards
12 anything. So there was no reason to put him any
13 further -- in any greater restraint. And that's
14 what four-point restraint would be, would be a --
15 you know, going up the ladder, adding more
16 restraints, more restrictive restraints. And like
17 I said before, you would do that if you were trying
18 to harm somebody, if he was showing a pattern of
19 doing that. And at the point ambulatory restraints
20 were almost enough to keep him under control.

21 It was almost what he wanted. He
22 wanted to left in ambulatory restraints to let the

1 these restraints?

2 Q. How long could he stay in the
3 restraints?

4 MR. BUTLER: Objection to form.

5 THE WITNESS: I want to say that he
6 stayed in the restraints for 25 or 26 days, but
7 at the time that we took the restraints off I
8 don't think he was pleased about it, but we had
9 an agreement that he wasn't going to be
10 assaultive when we attempted to take the
11 restraints off on the day that they were going
12 to be remove.

13 I know I spent hours that morning with
14 him in the company of psychology, religious
15 services. I had a chaplain come down and talk,
16 prayed with David, and I went as far as to have
17 Chaplain Jamiu, who was there at the time, come
18 down and pray with us.

19 And just set goals. Like I said, you
20 know, you come out of these restraints and --
21 the one person that meant probably the most to
22 him was his sister that he had contact with.

1 You know, we would set that goal, even though
2 he was on phone restriction. It was a
3 management tool that if I could get a phone
4 call approved through the warden, he was the
5 only one that could approve it, that we set a
6 goal of, you know, based on your behavior,
7 goal-oriented actions. You know, come out of
8 these restraints we'll look at good behavior,
9 towards the end of the week we'll sit down and
10 call your sister.

11 His grandmother was important to him.
12 He often talked about his grandmother, but his
13 sister was the one that was always a good
14 management tool for me to use with David
15 Womack. During the time that I was seg.
16 lieutenant, I know we sat down and placed a
17 couple of calls to his sister. It was hard.
18 She worked a lot. It was hard to get through.

19 And ordinary phone use in the Special
20 Housing Unit is they bring the phone down and
21 give you the option to get on it. If you
22 call -- you're allowed a phone call every 30

1 days. And if you call and the person you want
2 to talk to is not there, you get an answering
3 machine, it still sort of counts as your call,
4 because you placed a call. 204 inmates to
5 accommodate.

6 With David Womack, I always made sure
7 that I was the one that gave him the phone
8 call. That if he was asking for it, I set it
9 up with the warden to get approval, and we'd
10 sit there until we got through to his sister.
11 And he knew that I would do that for him.

12 So I would try to set goals like that.
13 And I believe that day that was one of the
14 things, we were setting -- we were looking
15 forward to making a call to his sister. And I
16 think that was a big help sitting there and
17 good faith that I had the chaplain there and
18 psychology there. And it was like I had people
19 lined up to talk to him to try -- come on.
20 This is getting ridiculous, staying in this
21 amount of time.

22 So what more -- I mean, my head was

1 touching the ground. I was bending over
2 backwards trying to get this individual out of
3 restraints.

4 BY MR. HEWITT:

5 Q. And these efforts that you were just
6 talking about with the chaplain and with psychology
7 and with calling his sister, was that on the final
8 day that he was in restraints?

9 A. Right.

10 Q. Had you ever made any such efforts
11 prior to that?

12 A. Not to the extent. That day I just --
13 everybody was making their rounds that day, so I
14 was able to sort of corral them all in there at the
15 time to get the restraints off of him.

16 But the -- yeah, it was often -- like I
17 said earlier in my interview or testimony or
18 whatever this, everything that I did with David
19 Womack was goal oriented. This is what we're going
20 to do. You know, if I had a project that was
21 isolated, even though he was a high maintenance
22 inmate to have in the Special Housing Unit, I had

1 to find tools that I could manage this guy with.

2 And if that meant something as menial
3 as folding laundry, just to get out of that cell
4 for an hour a day -- I really didn't need laundry
5 done, but I knew getting him out of that cell and
6 getting him into a secure area -- and it had to be
7 a secure area. He couldn't just be out with like
8 an ordinary orderly walking down the ranges like an
9 orderly in the Special Housing Unit.

10 I would find work that needed to be
11 done. Maybe something would need painted. Another
12 cell would need painted that was empty. Hey, Dave,
13 would you paint this for me? Just to keep his mind
14 busy. To help manage him. To get him there. To
15 keep him busy. It was day to day with him. Like I
16 said, he goes zero to a hundred in a hurry.

17 But little things like that I found, as
18 the SHU lieutenant, worked for me in managing David
19 Womack. So, yeah, the entire time he was in
20 restraints, the entire time he was coming back from
21 the hospital, I mean, I was standing down at the
22 door talking to him, saying these things that I'm

1 telling you. You know.

2 The day that I was trying to get his
3 restraints off, I know I had some cells that need
4 painted and that was something I was using as a
5 management tool. Hey, get these restraints off. I
6 have a couple cells up there that I'm going to have
7 you paint tomorrow. I'm going to get you out of
8 your cell for a little bit.

9 Those were some of the things I was
10 doing to try to better manage him. So, yeah, it
11 was all along. The entire time that he was in
12 restraints, those were efforts that were made on my
13 part.

14 Q. Previously you were discussing about --
15 you had mentioned him getting transferred. What
16 was that about?

17 A. It's been six years ago. I don't
18 recall what he did to get into the Special Housing
19 Unit, but he wanted a transfer out of the
20 institution, which means he didn't want to go back
21 to general population, he wanted transfer to a new
22 institution.

1 It's not one of those things where you
2 snap your fingers and you're gone the next day.
3 There's a lot of things -- a lot of hoops to jump
4 through before somebody gets transferred. The unit
5 team has to do the transfer order, it gets routed,
6 then it goes outside the institution. Back then it
7 was probably to the region. Then the regional
8 designator would look, if it's a good reason to
9 transfer somebody or not. If it is, then they have
10 to find an institution that he's compatible, that
11 he doesn't have separatee issues at. And then we
12 put him, you know, in for transfer.

13 Once it comes back, then he waits for a
14 seat on the bus until he can get transferred from
15 the institute to a holdover institution until the
16 time when they have an empty bed. So it's a rather
17 long process and, like I said, David wasn't one
18 where -- patience wasn't one of his virtues. He
19 wanted instant gratification, and if he didn't get
20 it, he was going to make sure that everybody knew
21 he wasn't happy.

22 Q. What do you mean by separatee issues?

1 A. You and I fight, the Bureau of Prisons
2 makes us a separatee. Keep away -- they're not
3 going to put us back in the same cell. We're not
4 trying to run a gladiator school or anything like
5 that. It's we're going to keep you and I apart
6 from one another. You're going to go to another
7 prison and I'm going to maybe stay at this prison
8 or go to a completely -- a third prison.

9 Q. Did Mr. Womack have any separatee
10 issues?

11 A. I know he had several separatees.

12 Q. Were any of those separatees in
13 Lewisburg?

14 A. I don't recall. They wouldn't have
15 been separatees out on the compound. They wouldn't
16 have been allowed on the compound together. So I
17 know we checked separatees when you come to the
18 jail and then before we let you on the compound to
19 ensure that you're not with somebody that you're
20 supposed to be separate from.

21 Q. Do you recall if Mr. Womack refused to
22 take a cellmate during this time?

1 A. Refused to take a cellmate?

2 Q. Yes.

3 A. Yes, sir.

4 Q. So he tried to manipulate a single
5 cell?

6 A. Yes, sir.

7 Q. Can you tell me a little more about
8 that?

9 A. Simply that he refused to take a
10 cellmate. He was one of those guys that tried to
11 get a following of the inmates on the range,
12 that -- with his poor behavior, and that he was
13 going to be the one that -- I'm going to set the
14 stance here. I'm not taking a cellmate. And if
15 you put a cellmate in here and you're responsible
16 for what I do, I'm going to hurt this guy, and then
17 would go on with the forms of bad behavior that he
18 would express to us, the forms -- the things that
19 he would do if we put somebody in there with him.

20 Q. And how did you respond to that?

21 A. Oftentimes I would get him to comply
22 with hand restraints and take him up to my office

1 and talk to him. Almost like a child that was
2 throwing a bully fit. You would have to calm him
3 down and have to work with him. He was -- I said
4 it before, he was high maintenance. He took a lot
5 of my day up while he was housed in the Special
6 Housing Unit. So I would -- being from the
7 District of Columbia, I would always -- always
8 trying to find somebody from the District of
9 Columbia to house him with.

10 He -- it was hard finding somebody
11 compatible, but the times that I could find
12 somebody compatible with him, you know, I would
13 always bring that -- you know, find two or three
14 guys that he was compatible with out of 200. It
15 wasn't that hard to do. Even if it meant moving
16 cellmates, splitting guys up so that I could find
17 somebody for David to live with. In cases like
18 that you have to go above and beyond to find guys
19 that get along with each other.

20 Q. So when you say it was hard to find
21 cellmates that would be compatible with him, what
22 do you mean by that?

1 live with whites. So as a Special Housing Unit
2 lieutenant, I take all those -- those are some
3 other things, not just geographic, but race,
4 religion, age. You know, a young guy might not
5 want to live with an older fellow that sleeps all
6 the time. That older guy might not want to live
7 with that young kid that's up doing push-ups all
8 night. Several things go into making a cell
9 situation work.

10 But when it came to David Womack, my
11 head was touching the ground. I would always try
12 to be there and be part of the decision on who he
13 went with and I would always try to bring two or
14 three options of these are the guys that I have
15 available.

16 Q. Now, when Mr. Womack was in restraints
17 in December 2004 and early 2005, in January, did
18 you ask him to take a cell with another inmate?

19 A. Several times, yes.

20 Q. Did you ask him -- rather, did you
21 offer to take him out of restraints if he would
22 take a cellmate?

1 A. That would be a step in the right
2 direction. I often said, you know, that was almost
3 like a goal oriented -- this is what I have. I
4 know you guys get along. Let's go down there. I'm
5 not taking no cellmates. I want to stay in
6 restraints. I don't want a cellmate. He knew that
7 he couldn't be placed in a cell with a cellmate,
8 not in restraints -- if he were in restraints. So
9 that was often his answer, I'm not taking
10 restraints -- or I'm not taking a cellmate.

11 Q. So he would rather stay in restraints
12 than take a cellmate?

13 A. Right. If he took the cellmate, he
14 knew that the attention that he was gaining would
15 stop. And it was more important to him to get that
16 attention, the warden's attention that he was
17 demanding the transfer, and that we speed it up.
18 And that was his -- that was his reasoning. That
19 was his -- the tracks that his train of thought ran
20 on.

21 Q. Now, earlier today you mentioned that
22 there are cell rotation logs in the SHU?

1 A. Speaking personally, any time I dealt
2 with anything with Mr. Womack that was out of the
3 ordinary, if he wouldn't stand up to show me his
4 restraints, if he wouldn't allow the door to be
5 closed, if he broke the deadlock, double lock on
6 his leg irons or hand restraints, I would
7 automatically request for a modified use-of-force
8 team.

9 I didn't want myself or any of my staff
10 getting hurt. So they donned equipment, came and
11 gave Womack a direct order to sit down on the bed.
12 Sometimes he listened, sometimes he didn't. When
13 he saw the camera and the use-of-force team,
14 oftentimes he would listen and go ahead and sit on
15 the bed.

16 We'd go in, they would maintain control
17 of him. Somebody wearing protective equipment
18 would reapply the restraints so that it wouldn't be
19 too tight.

20 While he spent time in restraints he
21 would remove his clothing, flush it down the
22 commode to get the commode clogged up so the cell

1 that to Mr. Oliver.

2 Q. Did you ever witness Mr. Oliver having
3 communications with Mr. Womack?

4 A. Yes, sir.

5 Q. Do you recall any of them?

6 A. Goal oriented. I don't recall exactly
7 what they talked about. But with Mr. Womack it was
8 always goal oriented. They liked the fact that
9 while he was there -- he was a special management
10 inmate. It took a lot of my time. They would
11 compliment him on being able to work with me and,
12 you know, they were trying to reinforce that
13 relationship, you know, that rapport that he and I
14 had.

15 Other than that, there wasn't a whole
16 lot to talk to him about. Trying to get him out of
17 restraints, you know, what are you doing? This
18 isn't the way to go about it. Trying to convince
19 him, much like everybody else.

20 Q. Do you remember any specific
21 conversations that Mr. Oliver and Mr. Womack had?

22 A. No, sir.

1 Q. When you learned Mr. Womack was
2 engaging in the destruction of government property,
3 did you file an incident report?

4 MR. BUTLER: Objection to form.

5 You can answer.

6 THE WITNESS: Repeat the question,
7 please.

8 BY MR. HEWITT:

9 Q. Sure.

10 When you learned of Mr. Womack's
11 behavior in destroying property, did you file an
12 incident report?

13 MR. BUTLER: Same objection.

14 You can answer.

15 THE WITNESS: I'm sure I did on
16 occasion. Not every occasion. It was one of
17 those deals where I'll use the slang word
18 stacking. This guy, we're trying to get him
19 transferred and this behavior just -- where
20 we're just going to keep writing incident
21 report after incident report for the very
22 same -- similar behavior, and the more incident

1 reports we write, the longer he's going to be
2 with us.

3 We know what his behavior is. We're
4 documenting it. So on every occasion do I?
5 Maybe one per shift. Do I continue to, you
6 know, when he smears feces on the mattress and
7 ruins that, destruction of government property?
8 Yeah, he's probably going to get an incident
9 report for that, because it's going to be \$100
10 to replace that mattress.

11 Am I going to turn around and write him
12 up when he takes the fresh T-shirt that I just
13 gave him -- because I'm trying to get him to
14 live like a human being. When he takes that
15 off and flushes it down the commode, am I going
16 to write a second one? No.

17 BY MR. HEWITT:

18 Q. Why not?

19 A. Again redundancy. He's continuing to
20 do the same type of behavior. Document it and move
21 on.

22 Q. But the incident report is the initial

1 MR. HEWITT: Why don't we go off the
2 record. I'd like to take a quick look at a
3 video of the incident. Perhaps it will refresh
4 your recollection.

5 THE WITNESS: Okay.

6 * * *

7 (Whereupon, a recess was taken from
8 3:26 p.m. until 3:53 p.m.)

9 * * *

10 MR. HEWITT: Back on the record.

11 BY MR. HEWITT:

12 Q. The video we just watched was a video
13 produced by the defendants in this matter, dated
14 January 2nd, 2005, and it depicts Mr. Womack being
15 put in restraints. Generally speaking, that's your
16 understanding of that video?

17 A. Yes, sir.

18 Q. Did the video refresh your recollection
19 of the events of that day?

20 A. Yes.

21 Q. Before we watched the video, you were
22 talking about how Mr. Womack was refusing some

1 orders, which is in part what led to his being
2 placed in restraints on that day, correct?

3 A. Yes, sir.

4 Q. And so after viewing the video, it
5 appears that there were two orders that he was
6 refusing to comply with, and one was the refusal to
7 comply with being cuffed up, and the second was
8 refusing to comply with an order to take a
9 cellmate; is that correct?

10 A. That is correct.

11 Q. And it appears that Mr. Womack was
12 initially -- well, at the beginning of the video he
13 was being held in an ADX cell, correct?

14 A. Yes, sir.

15 Q. And that cell number was Cell 229,
16 correct?

17 A. Yes, sir.

18 Q. And that Jennifer Hunter, the staff
19 psychologist, was present at that time and engaged
20 in confrontational avoidance, correct?

21 A. Yes, sir.

22 Q. And that confrontational avoidance was